IN THE HIGH COURT OF BOMBAY AT GOA

APPEAL FROM ORDER NO. 12 OF 2005

MR.WALBURG VERISSIMO COUTINHO,MARGAO GOA. ....Appellants

Versus

COMMUNIDADE OF MARGAO REP.BY ITS ATTORNEY & 2 ORS. ....Respondents

Mr. A.N.S. Nadkarni with Mr. H. D. Naik, advocates for the appellant.
Mr. C. A. Ferreira, advocate for the respondent nos.1 & 2.
Mr. N. N. Sardessai, advocate for the respondent no.3.

Coram:- R. M. LODHA, J.

Date:- 14th September, 2005

P.C.

Heard Mr. A.N.S. Nadkarni, the learned counsel for the appellant, Mr. C.A. Ferreira, the learned counsel for the respondent nos.1 and 2 and Mr. N. N. Sardessai, the learned counsel for the respondent no.3.

The findings recorded by the trial Court that the appellant (original plaintiff) has failed to establish prima facie case, does not suffer from any error of fact and law. The consideration of the matter by the trial Court is elaborate. The trial Court has taken into consideration the material placed by the parties and based on that reached the finding that the plaintiff has established a prima facie case. I find no ground to take a different view. No case for interference in the impugned Order is made out.

However, rejection of the temporary injunction application by the trial Court and dismissal of the appeal by me shall not mean that the defendant no.3 or for that purpose defendant nos.1 and 2 take the law in their own hand and remove the encroachment if any, made by the appellant (original plaintiff) on the 3 mts. access claimed by the defendants. It will be open to the defendants to apply to the trial Court for an appropriate order for removal of the encroachment, if any, by the plaintiff over the 3 mts. access.

With the aforesaid observations the Appeal From Order is dismissed in limine.

Needless to say that any application made by the defendant no.3 or the defendants no.1 and 2 for removal of encroachment over the 3 mts. wide access shall be considered by the trial court in accordance with law uninfluenced by the impugned Order and the Order passed by me.

R. M. LODHA, J.